

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 91 OF 2014

M/S. PINKY SHIPYARD PVT. LTD., ... Appellant
Versus
THE BOARD OF TRUSTEES OF THE PORT
OF MORMUGAO ... Respondent

Shri E.O. Mendes with Ms. Gina Almeida, Advocate for the
Appellant.
Shri M.S. Khandeparkar with Shri R. Gawas, Advocate for the
Respondent.

Coram:- N. M. JAMDAR, J.

Date:- 28th January, 2015

ORAL ORDER:

By this Second Appeal, the appellant seeks to challenge the judgment and decree dated 4th September, 2013 passed by the Civil Judge, Junior Division, Vasco-da-Gama and the judgment dated 13th May, 2014 passed by the District Judge, South Goa, Margao. The learned Civil Judge decreed the suit of the respondent and injuncted the appellant from occupying/encroaching upon an area outside the one in occupation of the appellant. This decree has been confirmed by the District Court by dismissing the appeal.

2. The respondent-The Board of Trustees of the Port of Mormugao filed a suit seeking permanent injunction against the appellant contending that under deed of licence dated 17th March, 2006, the appellant was granted an area of 6978 square metres for a period of

11 months from 1st November, 2005 to 30th November, 2006 for the purpose of construction of ships. According to the respondent, the appellant encroached on an additional area of 2140 square metres and was illegally in possession of 9118 square metres, in total. Proceedings under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 were already instituted. The respondent prayed that since the appellant was determined to encroach upon the area other than the one allotted to it, it is necessary to injunct the appellant from doing so. The appellant also filed a counter claim and claimed that the appellant was in possession of 10,128 square metres.

The appellant also took up a contention as what was entered into between the appellant and the respondent was a lease.

3. The learned Civil Judge came to the conclusion that the appellant was initially granted 6978 square metres under the document of 17th March, 2006 and it had encroached upon additional 2140 square metres and that the appellant was likely to encroach further and, therefore, it was necessary to injunct the appellant from encroaching upon the additional area. The counter claim of the appellant was dismissed on the ground that the appellant could not prove that it was in possession of 10,128 square metres. This finding has been affirmed by the appellate Court.

4. Shri E.O. Mendes, the learned Counsel for the appellant submitted that both the Courts have completely missed the aspect of

the nature of document dated 17th March, 2006. According to Shri Mendes, this was an issue that ought to have been addressed by both the Courts below. Reliance was placed on Section 46 of the Major Port Trust Act, 1963. According to Shri Mendes, the parties were governed by provisions of Section 46 and this aspect ought to have been considered by the Courts below. To my mind, it is not necessary to examine the nature of the document in the present proceedings, which is only a suit filed simplicitor for injunction. What is important is to see that what was the area in possession of the appellant and whether grant of injunction was justified. All that the Courts below have done is to injunct the appellant from exceeding the area found in its possession on the date of the suit. Whatever may be the nature of the document what is material is the area allotted to the appellant under the same.

5. Shri Mendes then submitted that the Courts below have not considered the effect of the correspondence entered into between the parties in January, 2002 to February, 2002 wherein subject of lease of 10,128 square metres in favour of appellant has been referred to. He submitted that there is resolution of the Board of the respondent to that effect, and the appellants were called upon to pay the amount for the area of 10,128 square metres. Both the Courts have rightly noted that the property in question being public property, the area specified therein will supercede the area mentioned in any correspondence prior to execution of the document. A categorical finding of fact is

recorded by both the Courts that in addition to 6978 square metres, allotted under the document, 2140 square metres have been encroached by the appellant. This concurrent finding of fact as regard encroachment of 2140 square metres cannot be disturbed in the Second Appeal.

6. Once the position that the appellant is in possession of 9118 square metres, unauthorisely as alleged by the appellant, then no fault can be found with the courts below in issuing an injunction restraining a private party from encroaching on the public land in excess of the area allotted to it.

7. Shri Mendes then submitted that the cause of action for the suit arose in January, 2002 and the suit filed is beyond period of limitation. As it has been rightly pointed out by Shri Khandeparkar, learned Counsel for the respondent that suit for injunction was filed based on apprehension that the appellant may encroach further considering his past actions and, therefore, cause of action for filing of such suit accrues every day.

8. It was then submitted that no adequate opportunity was given to the appellant to put forth its case made out in the counter claim. It has to be firstly noted that this point is not taken up in the appeal memo before the District Court. Secondly, it appears from the record that two opportunities were granted to the appellant. The subject

matter of the suit was issuance of injunction to protect a public property and, therefore, the trial Court was right in passing the order of injunction expeditiously. In any case, on merits the appellant has not been able to justify his occupation of 10,128 square metres so as to object to the grant of injunction.

9. The respondents have already initiated proceedings under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 in the year 2002, which are stated to be still pending. Since the respondent is a public body and what is at stake is a public property, it is expected that the respondent will expedite the proceedings before the State Officer. As regard the merits of the rival contention in relation to the rights under the document and whether the respondent is entitled to evict the appellant will be considered on its own merits by the Estate officer. It is clarified that the observations made by both the Courts below are only in respect of grant of injunction.

10. In view of the aforesaid, no substantial question of law arises. No perversity is found in the orders passed by both the Courts below. The Second Appeal is accordingly rejected.

N. M. JAMDAR, J.

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